

Memorandum

Date : October 14, 1998

To : Greg Young
CALFEDFrom : Dan Flory, Chief
Supply Reliability Planning Branch
Department of Water ResourcesSubject: Comments on "The CALFED Bay-Delta Program Water Transfer Program"
Early Review Draft dated October 1, 1998*attached*

Here are the Department's comments on the Pre-Admin. Draft of the Water Transfer Program. I have ^{also} attached a marked up copy of your draft to this memo. Minor comments or corrections are noted in the text. Longer comments or suggested changes are noted with a number that corresponds to the following list. If you have any questions please give me a call at _____.

- cc: Kelly*
Attachment #1 →
1. Element and Component are used interchangeably - are they the same, if so use one term to avoid confusion.
 2. What does historic "stakeholder groups mean?
 3. Insert "identified by BDAC that are"
 4. Suggest you reword this awkward phrase
 5. Insert at the end of the paragraph "On the other hand, ill-conceived water transfers have the potential to encourage waste and to stimulate consumptive use."
 6. Don't you mean less valuable or less beneficial?
 7. Delete "(area of origin)" since it's a term of art, and "source areas" probably describes the situation adequately.
 8. The windows of opportunity are now really only August and September.
 9. Insert "and relief from current pumping constraints"
 10. Conjunctive use is a beneficial use and these type of programs don't always require transfers to make them work. What is the intent here?
 11. Not exactly : WC Section 1707, Is there another way to say this?

12. Insert " various other transfer proposals"
13. Are these the transfers that have raised concerns?
14. Insert "Overall, these differences of opinion demonstrate the difficulty of achieving a balance between "facilitating transfers" and providing adequate environmental scrutiny and mitigation.
15. Insert "need for greater"
16. What is the significance of this distinction? We don't think this is really accurate.
17. What about reversion?
18. This sentence is unclear.
19. The discussion of water transfer law in this Section of the Draft is only the tip of the ice berg which describes overlaps and contradictions in existing law. We would suggest that all California Water Code Sections and Federal Statutes pertaining to water transfers be included as an appendix to this report. Such an appendix would provide CALFED-BDAC, stakeholders and agencies with an all-encompassing view of existing water transfer law. In addition, if many legislators, as suggested on page 10, have expressed great interest in developing legislation, which would have an impact on the water transfer market in California, such an appendix may be of value in developing future legislation.
20. Need to minimize this and reorder, statutes are first in legal hierarchy and this is old politically with a new administration.
21. "Reasonable and beneficial" are state law concepts.
22. This paragraph is not accurate.
23. Insert "For transfers proceeding under"
24. Insert "is required"
25. WC section 386 has limited application. These sections operate independently.
26. Insert "requires public agencies to make a finding"
27. These statutes do not form an exhaustive list of the laws governing transfers. Other laws operate to protect the environment including, for example CEQA,

NEPA, ESA, Clean Water Act, the Public Trust Doctrine, local government groundwater ordinances, and local government management plans. You may want to cross-reference another section with a full list of laws on transfers.

28. Leave this section blank as a place holder since the information is irrelevant now.
29. Insert "The goal of CALFED's Water transfer Element is to promote beneficial transfers, while ensuring that undesirable transfers do not occur."
30. Insert "this conflict"
31. Insert "progress must be made on these issues as part of the CALFED program."
32. Insert "statutes require a finding of no adverse impacts to"
33. Insert "significant"
34. Insert "directly"
35. Insert "They are addressed indirectly by limitations on fallowing, where associated with environmental impacts."
36. Insert "with a greater volume of transfers, particularly certain types of transfers, there is the potential for"
37. Insert "Moreover, there are data gaps in documenting potential impacts."
38. Should you insert some discussion on the subsidence and flooding issues that resulted in the local ordinances discussed on page 14?
39. Insert "What level of documentation is required?"
40. Insert "large-scale"
41. Another possible bullet "Limiting the frequency or annual quantity transferred"
42. With respect to a "tax" on transfers to compensate the local area for increased social service costs incurred by local governments or a "mitigation fund" for compensating losses or to pay for retraining farm workers, to be administered by local governments, information or hard data to base such solutions is limited or non-existent. To date no measurable correlation has been identified between water transfers and third party impacts. Due to constantly changing variables in the supply-demand for agricultural products

and services it may be impossible to definitively link these kinds of third party impacts to specific water transfer actions and to develop corresponding/reasonable solutions e.g. tax rates or mitigation funds. If policy makers want to establish a mitigation fund it should be established with the understanding that if local government institutes a tax that the mitigation fund shall not duplicate revenues generated from the tax.

43. What does this mean? Could this be reworded?
44. We would suggest you include a discussion of California Water Code Section 1220, which restricts direct export of groundwater within the combined Sacramento and Delta-Central Sierra Basins unless pumping is in compliance with a groundwater management plan adopted by a county board of supervisors. Water Code 1220, however, does not define what constitutes a groundwater management plan.
The list of solution options includes AB3030 water management plans incorporating rules on groundwater transfers and local ordinances to regulate groundwater transfers which may satisfy the requirements of Water Code Section 1220.
See also WC Section 1745 et. seq., especially 1745.10: "A water user that transfers water pursuant to this article may not replace that water with groundwater unless the groundwater use is either of the following: (a) Consistent with a groundwater management plan adopted pursuant to state law for the affected area. (b) Approved by the water supplier from whose service area the water is to be transferred and that water supplier, if a groundwater management plan has not been adopted, determines that the transfer will not create, or contribute to, conditions of long-term overdraft in the affected groundwater basin."
45. Replace with " Under existing law CEQA represents the primary mechanism"
46. Add "Many stakeholders do not feel CEQA is adequate for this purpose. The goal of CALFED once again is to address stakeholders concerns in a manner that promotes beneficial transfers."
47. This paragraph is not accurate.
48. Do you mean exported? WC section 1220?
49. Delete this paragraph and replace it with " There is no statewide groundwater regulation in California, unlike other western states. Rather, there is a patchwork system...local groundwater management, ordinances, adjudicated basins, and statutes."
50. Insert "Many communities also have developed or are developing groundwater management programs."

51. Insert "Without proper scrutiny and appropriate mitigation measures"
52. Insert "and this impedes transfers."
53. Insert "Local communities have begun looking at"
54. These are not real issues since they are vested private property rights.
55. This sentence is an oversimplification and not accurate. You could replace it with "There are also issues related to the little understood interconnection between groundwater and surface water. Generally, there is a need for more technical data in this area."
56. Insert "Although the State Board must still make a finding of no adverse impact, there is a concern that "
57. Insert "CEQA, however, specifically prohibits an agency from "piecemealing" a project to avoid environmental analysis."
58. Replace with "a State Board finding is required that a transfer would not injure other"
59. "Others believe the rule is too broadly applied" may be an overstatement which could be removed without losing the meaning of what others think which is "does not adequately consider the injury to other legal users of water..."
60. The discussion on the vadose zone is too technical and is not where the disagreement is. We would recommend deleting these two paragraphs.
61. Insert "there are often incentives such as operational savings, sustained crop production during dryer periods, endangered species and water quality benefits."
62. Insert "Moreover the law imposes an obligation to conserve including in some cases the incurring of reasonable expense by the user."
63. Insert "They argue that this is"
64. Insert "From an agency stakeholder standpoint many of these proposed "conservation water transfers" do not involve true conservation measures and, thus would violate the no injury rule. The CALFED objective is to relieve this stalemate which inhibits transfers."

65. This is not State policy. WC section 1011 is primarily an anti-forfeiture statute. It should not be read out of the context of the court and statutory scheme of maximum beneficial use.
66. We would agree that carriage water requirements should not apply so long as the water quality standards and outflow objectives are being met without reservoir releases from the CVP and the SWP and the export/inflow ratio is not controlling (i.e., when the Delta is in excess conditions). However, in the past we have not agreed to the transfer of water when the Delta is in excess conditions because this is water that would be released (bypassed) from reservoirs absent the transfer and would be difficult if not impossible to quantify. A second issue is that if there are excess flows in the Delta most water users would not want to pay for transfer water when they can make use of such excess flows.
67. Also, in excess conditions, the SWP pumps first for project deliveries to contractors and does not wheel for others.
68. Insert "stalling the process because the agencies lack the data to support legally required findings."
69. Should you insert some discussion about the Agricultural Memorandum of Understanding or refer to section 4.5.4?
70. The last solution option suggests "Broader disclosure of transfer windows and risk factors." This would be of little value for those planning a water transfer and wanting to go through the application and approval process. Given the lead time required the window of opportunity for transfer could be gone before an application and approval for transfer were received. One point should also be made clearly - that the information available to the CALFED Ops Group may be about as good as its going to get. There is an opportunity for broader disclosure, but the basic data will probably not get much better.
71. Dedicated capacity may be a possible solution, however, once a decision on whether to include dedicated capacity in new facilities is made, the issue of how to allocate and pay for such capacity should be made prior to design and construction of such facilities. Unless the users of the facility are willing to absorb the extra capacity costs or the state or federal government will subsidize the extra capacity it may be difficult to "sell" the idea.
72. The data collection, technical analysis and research and methodology development to be performed by the proposed Clearinghouse may help resolve some of the economic, environmental and resource protection issues. However, these statements are broad and not well defined. For example, existing surface and groundwater monitoring may not provide data in sufficient detail to perform meaningful analysis of proposed transfers.

Without adequate detailed baseline data it may be impossible to determine impacts of transfers. The existing groundwater monitoring on a regional basis is sufficient for overall trends but inadequate for site specific transfer analysis. This is hinted at on page 28; "...and performing broad-based technical work, such as baseline data collection and analysis and regional groundwater-surface water modeling..." The Clearinghouse concept may need to be examined more closely, with respect to what the Clearinghouse will do vs. what is expected. The same lack of detail monitoring may apply to surface water.

73. What is the reach of this? Does it include our own SWP contractors?
74. Delete this sentence. It can be confusing and does not add to the discussion.
75. The Project operators will have to look at each transfer on a case by case basis and will not be able to make a policy decision to "pre-approve" a class of transfers.
76. This is an area that is highly politicized and where our SWP contractors are likely to be influential in the development of the policy. There are also the "underground regulation" issues for the Department.